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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

O P I N I O N
ON THE DRAFT LAW
ON RECOGNITION, RESTITUTION
AND COMPENSATION OF PROPERTY
OF THE REPUBLIC OF ALBANIA

on the basis of comments by

Mr László SÓLYOM (Member, Hungary)
Mr Pieter VAN DIJK (Member, The Netherlands)

Endorsed by the Venice Commission
at its 58th Plenary Session
(Venice, 12-13 March 2004)

Introduction

1. On 12 January 2004, the Ombudsman of the Republic of Albania, Mr Ermir Dobjani, asked the Venice Commission to examine the draft law on the recognition, restitution and compensation of property in Albania.

2. Messrs Pieter van Dijk and László Sólyom were appointed as rapporteurs by the Commission. Their comments were endorsed by the Venice Commission at its 58th Plenary Session on 12-13 March 2004.

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A. Comments by Mr L. Sólyom

3. While I agree with the specific comments made by Mr Pieter van Dijk below, I would prefer to raise general considerations as to the concept of the Draft Law.

4. The Draft Law implements Art. 181 of the Albanian Constitution of 1998, which obliged the Assembly to issue "laws for the just resolution of different issues related to expropriations and confiscations done before the approval of this Constitution". The regulations shall be guided by Art. 41 which lays down the usual international guarantees of the right to property.[1] It is remarkable that a Constitution provides for such a question and that it occurs eight years after the change of system. Moreover, the "matters related to expropriations and confiscations" are not limited to the Communist rule; the period of time for "just regulation" extends from 1944 to November 1998 when the Constitution came into force. Apparently, the new principles and rules of ownership settlement also apply to legal provisions issued by the new regime between 1990 and November 1998. As the Constitution states in Art. 181, para. 2, the latter may only be applied in so far as they do not conflict with the Constitution. This means that Art. 181 has to be interpreted in connection with Art. 41, and this interpretation constitutes the common principles for both the new laws and the application of rules issued before the Constitution.

5. The Venice Commission is not aware of any official interpretation of Art. 181 with regard to Art. 41. As the available decisions of the Constitutional Court of Albania show that the Court emphasised that the regulation of restitution and compensation for expropriated property had to be based on the principle of equality. The Constitutional Court also noted that infringement of private property rights by the previous regime had to be remedied "by any means possible under the country's socio-economic conditions", and compensation had to be "fair".[2]

6. The Albanian Constitution requires "just regulation" and "fair compensation". Consequently, there is no constitutional obligation to return expropriated or confiscated property in kind to the former owner. Compensation does not have to be full, but should be fair. This is in line with the case-law of the European Constitutional Courts, which faced the same ownership problem in the nineties and set out theoretical grounds for the (re)privatisation of communist State property.

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[1] *The expropriations or limitations in the exercise of property right shall be ordered by law on the grounds of public interest and against fair compensation. However, Para 5 Art. 41 gives access to a court only regarding the amount of compensation (and not whether the limitation was in public interest).*

[2] *Decisions of 21.03.2000 and 24.04.2001.*

None of those Courts held that the right to property would require the restitution of the property taken by the Communist regime.

7. The German Federal Constitutional Court stated that restitution or compensation was not based on the right to property but on the principle of fairness and justice and, moreover, on the principle of the social state. This also means that there is no obligation for full compensation under the Constitution. To determine the amount of compensation for property losses, the financial situation of the State and its other obligations arising from the change of system shall also be taken into consideration. The main principle of compensation shall be equal treatment.[3] Similarly, the Hungarian Constitutional Court its case-law on compensation based on the principle of equality.[4] The Court determined, inter alia, that full restoration of previous ownership in land and partial compensation for all other property losses would contradict the principle of equality. The Hungarian Court explicitly stated that the Compensation Act created a new title for the claims of former owners, which excluded claiming under old titles. The same also follows from the position of the German Constitutional Court, which denied that compensation could be based on the right to property.

8. Indeed, a solid basis for the compensation issue presupposes the clarification of the relationship between the new law and the pre-constitutional law. The new, democratic Constitution has no retroactive effect. It is also generally accepted in Europe that the unconstitutionality of a law, as a rule, has no practical effect on the legal facts and relationships that have already been finally determined. But even where a finally determined legal situation remains untouched, new (for instance: legislative) obligations will or can originate from its unconstitutionality, and a solution must be sought. The validity of earlier acquisitions by the (communist) State of property for which the legal basis has now become unconstitutional can be recognised; on the other hand, the new Constitution can oblige the legislator to give compensation to the former owner. The legislator is free to choose the method of remedy. He may opt for the *in integrum restitutio*, or for full or partial compensation in money, vouchers or shares, depending on the historical and economic conditions, on the sole condition that comparable groups of former owners are treated equally.

9. This is the common solution to the problem in the post-socialist States.[5] It is to be noted that the "recognition" of former ownership in the sense that the original title was not lost in the expropriation by the communist State would raise difficult theoretical and practical problems as to the validity of the pre-constitutional law in general. Of course there may be cases where the expropriation was not lawful even under the then valid law, and the State may also have legal obligations from earlier laws, for instance where the compensation foreseen in those laws was not actually paid. Such claims may be brought before the court, but the enforceability is usually doubtful because of problems of evidence or the statute of limitations having run out. Such cases remain, however, the exception. Considering the vast number of property expropriations under Communism the above-mentioned solution is practicable: the Restitution/Compensation Acts

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[3] *Gerechtigkeit and Sozialstaatlichkeit. BVerfGE 84, 90 (121, 130).*

[4] *Decisions 21/1990: 4 October 1990 and 16/1991: 20 April 1991 in: Sólyom/Brunner: Constitutional Judiciary in a New Democracy, The Hungarian Constitutional Court. Ann Arbor, 2000, 108, 151; Comments by Sólyom, ibidem 30-35. Full text of further compensation cases (27/1991; 10/1992; 64/1993) in: Brunner/Sólyom: Verfassungsgerichtsbarkeit in Ungarn. Analysen und Entscheidungssammlung 1990-1993. Baden-Baden, 1995.*

[5] *It is also a common phenomenon that former owners insist on the idea that nationalisations and expropriations under Communism had no legal effect.*

create the title for (re)gaining property. "Recognition of ownership" means in that case that the former owner has a right to restitution or compensation under the Restitution/Compensation Act.

10. The settlement of property issues after Communism is different from other large-scale changes in ownership that occurred in history. It is not comparable with the nationalisation of whole industries (as for instance mining) or the secularisation of church property. It is only comparable with the process of establishing the Socialist collective ownership, which was aimed at the total liquidation of private property. Reinstitution of private property and market economy in post-communist States is an equally extraordinary historical process. While privatisation of the former State or collective property and compensation for victims must be in conformity with the new Constitution and the new international obligations of the State, it cannot be measured in all details by requirements that have been created for normal conditions. It is not by chance that for instance Estonia and Hungary ratified the European Convention on Human Rights with the reservation/declaration that Art. 1 of the First Protocol to the ECHR does not apply to issues of privatisation and compensation. Exceptions from restitution/compensation concerning certain types of property (movables, land subject to agrarian reforms after WWII, urban apartments) or of owners (legal persons, bodies corporate) may be permissible.[6]

11. The Albanian legislator is free to decide on the restitution of ownership as a main form of remedy for property taken under Communism. He is also free to provide full compensation instead of restitution in cases where the public interest requires that the property remain in public use. Although the lawmaker is not obliged by the Constitution to do so, this maximum compensation surely meets the constitutional requirement of just regulation and fair compensation under Articles 181 and 41. However, some conceptual issues of the Draft Law should be reconsidered.

12. The "recognition of ownership to property" (Art. 6 of the Draft Law) may be interpreted in various ways, some of which raise theoretical and practical difficulties. The Constitutional Court of Albania does not seem to have yet enlarged on the problem of the original validity of Communist expropriations. It should also be noted, that the Draft Law applies not only to Communist expropriations but also to granting former State property (within this, surely formerly expropriated and confiscated property) to new owners by law of the new regime. The beneficiaries of such redistribution of property are not necessarily the original owners. The "recognition" of ownership as recognition of the continuous existence of ownership titles with no regard to the laws that changed the ownership could question the validity of laws of the new regime. The exclusion in the Draft Law of expropriations made against just compensation (Art. 4,b) means that in such cases the State became the legal owner. This would also contradict the above interpretation of "recognition". Unclarified questions should be avoided in the Draft Law.

13. For the purpose of the Draft Law, it seems to be sufficient that the Law declares the right to restitution and compensation of the expropriated subject. It is recommended that "recognition" be deleted from the title and the text of the Draft Law.

14. Article 2 para. 2 of the Draft Law and Annex 1 raise doubts as to whether the principle of equality prevails. Restitution and compensation are not of the same value; compensation instead of returning the property to the former owner may be justified by the fact that the expropriated

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[6] *In Estonia and in Hungary nationalised apartments were not returned to the former owners. The law gave the actual tenants option to buy the flats they were living in for a low price. In Hungary only natural persons were compensated for property losses.*

property is being used for public purposes. The laws and the decree listed in Annex 1 grant former expropriated property to private persons for private use. The presumption of "expropriation in the public interest" (Art. 2, para. 2) is hardly acceptable for these cases. The former owners of the property subject to Annex 1 are not treated equally with other owners whose property is used by third persons and serves no public purpose.

15. Deletion of Art. 2, para. 2 and Art. 7, para. 1 point f. is recommended.

16. The Draft Law seems to presuppose that, as a rule, all "takings by the State according to legal acts, sub-legal acts, criminal court decisions or in any unjust form", especially by way of expropriation, nationalisation or confiscation between 29 November 1944 and November 1998 were "unjust" and violated the right to property of the owners; or are at least suspected of being unconstitutional if measured against the now valid Constitution, or (mostly the laws in Annex 1) seek revision and "just regulation" according to the Constitution as specified by the Draft Law. However, Art. 4 determines broad exceptions. Albania's policy will maintain the result of post-war changes in ownership such as the agrarian reform of 1945 and the consequences of the "extraordinary taxation" of the same year. From point b. of Art. 4 follows that there were cases in which expropriation was made against just compensation, and they therefore meet the requirement of Art. 41 of the Constitution. Property donated to the State is also excluded for restitution.

17. Under this regulation, restitution/compensation will be decided on a case-by-case basis. The Local Commissions check the validity of documents, which prove that the property was taken on the grounds of legal/sub-legal acts or criminal court decisions,[7] and they will surely have to identify the cases where just compensation was already paid and to determine the other cases excluded from the application of the Draft Law. The court will deliver the final decision on whether the property falls within the scope of the Draft Law. (Art. 20, para. 3) Although the State Committee will make decisions to unify the practice of the Local Commissions and also the Supreme Court can provide for the uniformity of court decisions, it seems that the scope of application of the Law is not determined with sufficient certainty as to either the input or the output. Considering the huge number of cases to be dealt with, it would be desirable to determine more exact criteria for property falling under the Law in the Draft Law itself and to leave less to the decisions to the Commissions and courts.

18. As to the "input", nationalisations and expropriations occurred also under Communism on a legal basis. In those highly centralised regimes, expropriations of a different kind of property (land, houses, banks, and factories of certain size, even movables such as jewellery, gold, silver, objects of art, private libraries and archives) were often part. of political campaigns. That is, the laws, decrees etc. on the basis of which mass expropriations and confiscations were carried out can be identified. On the other hand, there may be nationalisation laws that provided for fair compensation, which was then in fact paid. There may be laws that ordered confiscation of property, but even under today's constitutional standards these cases may not be objected to, such as for instance confiscation of property of war criminals. Similarly, not all criminal court decisions that confiscated property can be considered as "unjust taking". The latter applies to political processes, which were characteristic in the Communist regimes in the fifties. However, confiscation of property, for instance in smuggling or bribery cases, deserves no restitution.

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[7] *The term "other unjust ways" mentioned in Art. 2, para. 1 (and Option II to Art. 5) seems to play no further role and should be deleted.*

19. Regarding the uncertainties as to the output, the determination of excluded cases under Art. 4 lacks sufficient criteria. Donations to the State might have been enforced by political pressure. (For instance peasants who were unable to fulfil the duty of surrendering the products quota to the State offered their land to the State and moved into cities in order to escape criminal punishment. See also the political pressure against ethnic Germans to give up property rights in Czechoslovakia.[8]) By what criteria can it be decided whether compensation was "fair" under the economic and social milieu forty or fifty years ago? The very existence of "public interest" can only be judged fair if one considers the differences between the historical periods immediately following WWII or the changes which occurred during the long Communist rule.

20. Deciding on such essential questions – and probably developing uniform criteria after a large number of requests has already been decided – is neither a matter for administrative agencies, such as the Local Commission, nor for the judiciary. These are questions of policy concerning a genuine problem of democratic transition, the settlement of property rights as a part. of establishing a market economy based on private property. As such, these problems must be covered exclusively by the decisions of the legislator and of the Constitutional Court.

21. Considering the nature of these questions and also the need for a uniform rule applicable in a large number of cases, it is recommended that the Draft Law change the method of regulation. The Law on Restitution/Compensation should determine and list all the laws, decrees and other sub-legal acts on the basis of which expropriation, confiscation and other taking of property was effected during the period between 1944 and 1989. The catalogue can also include laws whose effects the Assembly has revised. (such as Annex 1 in the present Draft). The legislator may omit those laws whose effects will not change (for instance the 1945 laws on agrarian reform) or those laws on the basis of which the takings had been fairly compensated. This is the best way to solve the problem of restitution/compensation for movables.[9] The Constitutional Court can review the catalogue of legal provisions that determine the scope of restitution/compensation. The constitutional review guarantees that the principle of equality and fair compensation is complied with. On the other hand, the Constitutional Court will determine the constitutional limits of the margin of appreciation that is necessary for the legislator in this highly political issue of transition.

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[8] *The former – common for many Communist States – was taken into consideration by the Hungarian Constitutional Court in the above-cited decisions, for the latter see Decision of the Constitutional Court of the Czech Republic, Az IV.ÚS 205/97, Nr. 144/1997.*

[9] *The proposal of the Draft Law has no limitation as to the movable objects for which restitution/compensation may be requested and the discretion of the Commission to decide whether the taking was "unjust" is also unlimited. This solution is constitutionally questionable, and practically boundless and endless.*

B. Comments by Mr P. van Dijk

1. Introduction

22. By way of introduction, two preliminary observations may be made:

- Some of the ambiguities or inconsistencies noted in the following comments may be explained by the English translation provided to the Venice Commission.

- The Draft was submitted to the Commission without an Explanatory Memorandum; some of the amendments suggested here could alternatively be achieved by an explanation in an Explanatory Memorandum.

2. Comments on an Article-by-Article basis

23. In Article 1 of the Draft, among the objects of the Law, there should also be reference to the object of regulating judicial review, which regulation is to be found in Article 20, paragraph 3.

24. The first paragraph of Article 2 of the Draft (in the English translation) speaks of the taking of property by the state "according to legal acts, sub-legal acts, criminal court decisions *or any other unjust form*". It is striking that legal acts and sub-legal acts (presumably statutes and regulations of lower rank are meant here), as well as court decisions are qualified as "unjust" forms of the taking of property.

25. It might be argued that *any* governmental act under the former Communist regime is now considered "unjust", but the provision is not restricted to that period, since it refers only to a starting date (29.11.1944), but not a closing date. Article 19, paragraph 1 of the Draft seems to imply that the closing date is the entering into force of the Law. Consequently, also the State's taking of property after the reform is intended to be covered by the Draft. If the English translation is correct, the provision has to be rephrased.

26. The second paragraph of Article 2 refers to an annexed list of Statutes and a Presidential Decree, and provides that expropriations or limitations amounting to expropriations that have been imposed by the State in the implementation of the laws provided in the Annex are considered expropriations in the public interest.
This formulation raises two questions:

a) Are the words "the laws" intended to exclude the Presidential Decree mentioned in the Annex? If not, the Presidential Decree should be explicitly mentioned in this paragraph.

b) The provision contains a legal presumption with respect to the requirement of a public interest. Does that mean that an appeal to a court, as provided for in the third paragraph of Article 20 of the Draft, does not cover the legal issue of whether any of the expropriations or limitations carried out under one of those laws was in the public interest? If that were the intention, the provision would conflict with Article 6 of the European Convention on Human Rights, which provides that in the determination of his or her civil rights everyone is entitled to a hearing by an independent and impartial tribunal. The right to property is doubtlessly a civil right in the sense of Article 6, and the issue of whether the expropriation is in the public interest concerns a "determination", since the person concerned is entitled to restitution if the

expropriation is held not to be in the public interest. According to the Strasbourg case-law, this right of access to court implies that the court shall have "full jurisdiction". Consequently, the issue of "public interest" must be subject to judicial review. This should be reflected in the wording of Article 2, paragraph 2.

27. In this context, it is pointed out, that Article 41, paragraph 5 of the Albanian Constitution contains a guarantee of access to court for disputes concerning only the extent of compensation, which, in the light of Article 6 of the European Convention on Human Rights, is too restricted.

28. In view of the above observation, a recommendation is made to delete paragraph 2 of Article 2, in accordance with Option II of Article 7, paragraph 1 under f.

29. The formulation of Article 3, under a. of the Draft should make it clear that "unjustly" is meant to be a qualification of "dispossessed" only, and not of "expropriated" and "confiscated".

30. Article 3 under b. restricts the scope of the Draft Law to "immovable" property. Article 1 of the First Protocol to the European Convention on Human Rights does not contain such a restriction of the right to peaceful enjoyment of possessions. And, indeed, movable possessions such as art objects, jewellery and the like may be very valuable, and may be subject to confiscation. Movable possessions, therefore, would seem to require the same kind of protection.

31. Article 5 of the Draft presents two options to deal with movable property. Both options are acceptable, but in order to avoid the impression that the right to peaceful enjoyment of movable possessions is of a different character or a lower rank, there is a certain preference for option 2.

32. Since in that case the definition of "property" in Article 3 under b will have to be revised, it must be stated explicitly in the articles that follow if any of the provisions do not apply to movable property.

33. The definition of "expropriated subject" in Article 3, sub. c. is not complete, since it does not cover "any other unjust form" of nationalisation, expropriation or confiscation", as mentioned in Article 2, paragraph 1.

34. Article 4 of the Draft excludes several types of expropriation, confiscation and other forms of acquisition of property by the State from the application of the Law. This again raises the issue of judicial review. If the Law does not apply to these takings of property by the State, does that mean that judicial review is also excluded, or do general rules of legal protection apply? If the former were the case, it would conflict with the requirement of access to court as laid down in Article 6 of the European Convention on Human Rights. This point has to be clarified.

35. The first paragraph of Article 5 of the Draft (in Option 2) implies a presumption of State ownership and contains an enumeration of means to prove private ownership. The inclusion of the word "*etcetera*" makes the enumeration open-ended. It is preferable to state explicitly that private ownership may be ascertained by all means provided for in Albanian law (see the Judgment of the European Court of Human Rights of 9 December 1994 in *The Holy Monasteries v. Greece*, para. 58).

36. The exception of restitution referred to in Article 7, paragraph 1 under e (special cultural and historical property) is not self-evident. Why is State ownership required in those cases in the

public interest? The law may provide the necessary guarantees for their preservation and use, for public access *etcetera*, as is the practice in many countries, in the form of legislation concerning the protection of monuments and other objects of cultural heritage. Indeed, the second paragraph of Article 1 of the First Protocol to the European Convention on Human Rights explicitly recognises the right of the State to control the use of property in accordance with the general interest.

37. It is true that the European Court of Human Rights leaves a broad margin of appreciation to the domestic authorities as to what "public interest" requires (see the above-mentioned judgment in the *Holy Monasteries* case, para. 69). On the other hand, European standards common in most European States are also of relevance here.

38. In view of Article 181 of the Constitution, it is recommended that the exception of restitution referred to in Article 7, paragraph 1 under f (Option I) be deleted in accordance with Option II. See also paras. 26 b), 27 and 28 of this opinion.

39. The second paragraph of Article 8 of the Draft is based on the principle of protection of acquired rights of the State or third parties, which results in the obligation of the expropriated person to pay compensation for the investment or to resign him- or herself to the expropriation. The only condition for entitlement of the third party to compensation for the investment is that the investment was made "in conformity with legislation in force". It is submitted that not only should the investment have been made in conformity with the applicable law, but the third party should also have made the investment in good faith as to his or her property right at the relevant moment. Otherwise, the obligation to pay compensation or to resign oneself to the expropriation would amount, for the expropriated person, to a limitation of the enjoyment of possessions that is not proportional. Indeed, why should the beneficiary of the expropriation enjoy better legal protection than the original owner of the building site?

40. The second paragraph of Article 11 of the Draft states that the Local Commission on Restitution and Compensation of Property takes a reasoned decision. It does not provide for any criteria on the basis of which the Commission decides whether to accept the request of the expropriated person or to opt for another form of compensation. This makes it difficult for a court to review the decision of the Commission, since in general in administrative law cases, the court should not substitute its own choice of several options for that of the administrative body appealed against. The addition of a provision should be considered requiring the Commission to honour the request of the expropriated person if feasible, or otherwise opt for the form of compensation that is most comparable to the one proposed by that person.

41. After all, as a rule, compensation should approximate to *restitutio in integrum* as closely as possible in order to be proportionate. (As a good example, see Article 12 of the Draft, which purports to come as close as possible to *restitutio in integrum).*

42. It is not clear what "purpose" in the second paragraph of Article 13 of the Draft means in relation to the valuation.

43. In the third paragraph of Article 13, in addition to "expert group" there should be reference to "any other person appointed by the Commission by virtue of the first paragraph".

44. It would be advisable to include in the third paragraph of Article 13 of the Draft, or delegate for subordinate regulation, a procedure for challenging a member of the Commission or an expert for conflict of interest, with a reference to Article 16, paragraph 1 under j.

45. It would seem to be more logical to combine Articles 11 and 14 of the Draft, since Article 14 enhances the position of the expropriated person *vis-à-vis* the compensation.

46. In Article 15, paragraph 2 under e. of the Draft, the word "crime" should be further defined to make clear that a minor offence or a very light penalty would not disqualify the candidate.

47. Article 15 of the Draft has to clarify if, and to what extent, the proposals made by the President, the parliamentary majority and the opposition are binding nominations for Parliament. If not, the question arises what is the added value of appointment by Parliament. In principle, it is not in conformity with the status of Parliament for it to have to take decisions that leave no choice.

48. A deletion is suggested of the words "if he has been working in public administration" in Article 15, paragraph 2 under f. of the Draft. If, for example, a lawyer working in a private law firm has a disciplinary measure taken against him or her by the (Chairman of the) Bar for a serious matter, he or she should be disqualified as a candidate as well.

49. In Article 16, paragraph 1 under a of the Draft, the words "except for the case provided in Article 19 of this Law" should be clarified. It is understood to mean that, in the event that a Local Commission for Restitution and Compensation of Property has not taken a decision within three or four months, respectively, there is no appeal to the Committee but the Committee deals with the case *ex officio*.

50. In Article 16, paragraph 1 sub. c. of the Draft, there should be a reference to Article 17, paragraph 3. Moreover, for the sake of clarity "nominates" should read "appoints" or "approves" (see Article 17, paragraph 2 and Article 21, paragraph 2).

51. It is suggested, with respect to Article 16, paragraph 1 under g of the Draft, that the Regulation of the Committee for Restitution and Compensation of Property should not be approved by the Committee itself, but by Parliament or the Government for the sake of an additional guarantee of the legal protection of the expropriated persons and of third parties.

52. It is recommended that the second paragraph under a of Article 16 includes the violation by a Local Commission of its rules of procedure.

53. It should be clarified how the provisions of Article 16, paragraph 2 under b. and under c. relate to each other. It would seem that a case under c. automatically results in a case under b.

54. In relation to Article 17, paragraph 3 under b. and d., the same observation may be made as was made in relation to Article 15, paragraph 2 under e. and f.

55. If the wording of Article 2, paragraph 1 of the Draft is broadened to include other expropriations, that should be taken into account in the wording of Article 18, paragraph 1 under a.

56. To the words "at the end of the term for appeals" in Article 18, paragraph 4 of the Draft should be added "and if no appeal has been lodged".

57. Article 20 of the Draft seems to suggest that no appeal to a court lies from a decision of the State Committee for Restitution and Compensation of Property on procedural issues. It is clear, however, that decisions by the Committee concerning the jurisdiction or competences of a Local Commission in the sense of Article 16, paragraph a and decisions by the Committee concerning the issue of the documents on which a Local Commission has based its decision may lead to a "determination of a civil right or obligation" in the sense of Article 6 of the European Convention of Human Rights. Excluding an appeal to a court would therefore be in conflict with the right of access to court guaranteed in Article 6 and also with the last paragraph of Article 41 of the Albanian Constitution.

58. In the first paragraph of Article 21, the word "nominates" should be replaced by "appoints" (see the first paragraph of Article 15).

3. General conclusion

59. As a general conclusion, it may be stated that the Draft does not raise many objections from a point of view of constitutionality, the rule of law, and human rights. The main doubts expressed concern:

- possible limitations of the right of access to court;
- limitations of, or lack of clarity with respect to the right of the expropriated person to have, in principle, his or her choice of compensation honoured;
- certain exceptions to the right to restitution of property taken by the State;
- nomination to and composition of the State bodies created for the implementation of the Law.

60. Some of these concerns will have to be addressed in any case. Others would no longer apply if the scope of application of the draft Law were reduced, making it applicable only to takings of property carried out under the communist regime (or at least prior to the entry into force of the European Convention of Human Rights).